

## INTRADEPARTMENTAL CORRESPONDENCE

August 12, 2020  
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OFFICE OF THE INSPECTOR GENERAL

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POLICE COMMISSION  
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**TO:** The Honorable Board of Police Commissioners

**FROM:** Chief of Police

**SUBJECT:** UNINTENTIONAL DISCHARGE (NON-TACTICAL), FID NO. 052-19

Honorable Members:

The following is my review, analysis, and findings for the Non-Tactical Unintentional Discharge (NTUD), Force Investigation Division (FID) No. 052-19. On August 3, 2020, this case was presented to the Chair of the Use of Force Review Board (UOFRB). I have reviewed and adopted the recommendations from the Chair of the UOFRB for this incident. I hereby submit my findings in accordance with Police Commission policy.

### SUMMARY<sup>1</sup>

On October 24, 2019, at approximately 1630 hours, Officer T. Smith, Serial No. 43155, Foothill Patrol Division, was off-duty. Officer Smith drove his personally owned vehicle, a 2018, black, two door, Ford pick-up truck to a friend's residence located in the City of Canyon Country. Officer Smith planned to assist his friend with evacuating his friend's residence due to an active fire in the area.

According to Officer Smith, he stayed at his friend's residence until approximately 2300 hours. During that time, Officer Smith consumed approximately *nine to fourteen beers*. Officer Smith left his friend's residence at approximately 2300 hours and drove to a local bar. Officer Smith patronized the bar and consumed approximately *three Heineken beers* until approximately 0140 hours on October 25, 2019. Officer Smith stated that he could safely operate a motor vehicle because he *did not feel that intoxicated and felt okay to drive*. Officer Smith, upon leaving the bar, drove to a nearby 7-Eleven store. Officer Smith entered the store with a holstered revolver, which was concealed inside his front left pants pocket. His service pistol was left secured in his Sam Browne, which had been left inside of his truck on top of the rear passenger seat. Officer Smith purchased three Modelo beers and a pack of cigarettes. Officer Smith provided the cashier with his Los Angeles Police Department (LAPD) Identification (ID) card and paid with cash.

**Note:** According to the FID investigation, Officer Smith lost his wallet two weeks prior to this incident. Officer Smith completed a Lost Property Investigative Report documenting the

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<sup>1</sup> The summary and the investigation completed by FID for this incident have been provided to the Board of Police Commissioners.

loss of his California Driver's License and his Department Police ID card. Officer Smith had used the report to obtain a new police ID card.

According to Officer Smith, he stated that he had showed his police ID card to the cashier as it was the only form of identification that he had available.

According to Officer Smith, after completing his purchase he exited the store and walked to his truck. Officer Smith recalled briefly conversing with Los Angeles Sheriff Department (LASD) deputies, who were standing outside of the store. After entering his truck, Officer Smith removed his loaded service pistol from the holster of his Sam Browne belt. He placed his service pistol on top of the truck's center console with the pistol's muzzle pointed toward the front passenger door. Officer Smith stated that due to the *time of night in an area like that*, he usually keeps whatever weapon he carries *up on the center console*; however, when he observes police officers, he sets *it somewhere out of sight* (**Additional Tactical Debrief Topic - Holstering Service Pistol**).

**Note:** According to Officer Smith, his service pistol was loaded to the maximum capacity; *seventeen* rounds inside of the magazine and *one in the chamber*, which totaled eighteen rounds.

According to Officer Smith, he exited the north driveway of the store parking lot and conducted an eastbound turn onto Soledad Canyon Road. He negotiated a U-turn from eastbound to westbound Soledad Canyon Road and began merging towards the left-hand turn lanes. As he approached Sierra Highway, he observed two LASD deputies sitting in a marked black and white police vehicle, which was parked at the northeast corner of Sierra Highway and Soledad Canyon Road. Due to an active fire in that area, the police vehicle's forward-facing red lights were activated as they served as a traffic barricade to block northbound access to Sierra Highway. Officer Smith stated that he was concerned that his service pistol would be seen by the deputies and that they would mistake him for an unlawful firearm possessor. He decided to move the pistol from the center console with the intent of concealing it. Officer Smith entered the left turn lane and began to apply the brakes to slow down for the upcoming red phase tri-light. This caused the service pistol to slide on the center console. Fearing the pistol would fall, he quickly grasped for his service pistol with his right hand. When he *grabbed* his service pistol, a single round was discharged (**Unintentional Discharge – Basic Firearm Safety Rules**).<sup>2</sup>

**Note:** According to the FID, investigation the NTUD occurred on October 25, 2019, at approximately 0150 hours.

According to Officer Smith, his vehicle came to a complete stop at the limit line of the intersection. He was unsure of the trajectory of the fired round, but he observed that the LASD police vehicle was to his immediate right. He did not believe the deputies were struck by the discharged round because he observed them *nonchalantly getting out of their car*. The traffic light turned green, and *in a state of panic and fear* that the deputies would return fire, Officer

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<sup>2</sup> Los Angeles Police Department Basic Firearms Manual, Page 1, July 2015.

Smith negotiated the left turn onto southbound Sierra Highway and drove to his residence. Officer Smith indicated he drove "pretty normal" and "picked up a little bit of speed" once he made a left turn onto Jakes Way from Sierra Highway.

According to the FID investigation, immediately following the discharge, numerous LASD personnel responded to the intersection of Sierra Highway and Soledad Canyon Road. A crime scene was established and an Assault with a Deadly Weapon (ADW) on a Peace Officer investigation was initiated. According to the LASD investigation, deputies had observed a black truck drive away, south on Sierra Highway, at a high rate of speed.

According to the FID investigation, upon arriving at his residence, Officer Smith backed his vehicle into his garage. While doing so, the rear right side of his truck collided with the exterior garage wall causing damage to his truck. Once parked, Officer Smith inspected the damage to his vehicle and observed one bullet hole on the front right interior door panel and another bullet hole through the front right passenger window. According to Officer Smith, he only recalled one shot being discharged from his service pistol and believed the front passenger window was up when the shot was discharged. Observing two separate bullet holes confused him as they were not consistent with his recollection of only hearing *one sound*. Officer Smith attempted to call his father but stated he could not reach him.

**Note:** According to the FID investigation, Officer Smith's father was Sergeant M. Smith, Serial No. 26924, Foothill Patrol Division.

According to the FID investigation, the LASD investigation determined the second bullet hole through the truck's front window was consistent with the window being rolled down at the time the single round was discharged.

According to Officer Smith, while he was inside of his garage, he conducted an inspection of his service pistol. During the inspection, he counted the rounds inside and determined that there were *sixteen in the mag* (magazine) and *one in the chamber*. The seventeen rounds in his pistol were consistent with him only firing one shot. Officer Smith secured his service pistol in the holster of his Sam Browne belt and searched his vehicle for the discharged cartridge casing but was unable to locate it. He knew he was mandated to notify the Department regarding the unintentional discharge, but Officer Smith stated that he was too *embarrassed* and *scared* to do so at the time. Officer Smith entered his residence with his service pistol and Sam Browne, and went to sleep (**Additional/Equipment – Preservation of Evidence**).

According to the FID investigation, the LASD investigation collected video surveillance from the store. A review of the video identified Officer Smith as being inside the store and as a possible suspect responsible for the fired shot.

According to Officer Smith, he woke up at approximately 1000 hours, entered his garage, and observed shards of glass on the right front passenger seat of his truck. He removed the damaged right front window from the door frame and placed it on the garage floor. Officer Smith stated he called his father (Sergeant Smith) and informed him of the collision with the garage wall, but



still did not mention the incident involving the unintentional discharge of his service pistol. His father instructed him to get the collision damage repaired.

**Note:** According to the FID investigation, Sergeant Smith believed he had spoken with his son at approximately 0200 hours; however they only discussed the collision and damage to Officer Smith's truck with Officer Smith's garage. Sergeant Smith stated Officer Smith did not mention the NTUD incident.

According to Officer Smith, at approximately 1300 hours, he drove his truck to Rapture Auto Body. He spoke with the owner/manager, R. Martinez, who inspected Officer Smith's vehicle. Officer Smith did not identify the bullet hole in the door, nor did he discuss it with the shop manager. Martinez provided Officer Smith with a repair estimate totaling approximately six thousand dollars. Officer Smith had opted not to report the incident to his automobile insurance company; therefore, the manager required a cash deposit. Officer Smith parked his vehicle at the auto repair shop and took a rideshare service to a local bank to withdraw money for the repair deposit. While at the bank, he discovered an online Santa Clarita news article about shots being fired at LASD deputies. Officer Smith's panic increased upon learning that the location of the incident was at the intersection of Sierra Highway and Soledad Canyon Road. In his mind, there was no doubt that the article was related to the discharging of his service pistol. Officer Smith completed his cash withdrawal and left the bank. Still embarrassed and in fear of the possible consequences of his actions, Officer Smith again opted not to make any notification to the Department.

According to Officer Smith, he returned to the auto repair shop via rideshare and gave Martinez a deposit of eleven-hundred dollars. At approximately 1430 hours, Officer Smith met with his father, Sergeant Smith, at a nearby Home Depot business. Sergeant Smith drove Officer Smith to a local rental vehicle center and dropped him off, so Officer Smith could rent a vehicle while his truck was being repaired. Officer Smith was unable to rent a vehicle because he still did not have a driver's license in his possession. Officer Smith hired a rideshare service to take him to his residence at approximately 1630 hours.

According to Officer Smith, at approximately 1745 hours, he called Sergeant Smith. During that conversation, Officer Smith informed Sergeant Smith of the NTUD incident. Sergeant Smith advised Officer Smith to immediately call the Foothill Division Watch Commander and report the incident (**Additional/Equipment –Protocols Subsequent to a CUOF**).

**Note:** According to the FID investigation, Sergeant Smith believed Officer Smith called and notified him of the NTUD incident at approximately 1510 hours.

According to the FID investigation, at approximately 1800 hours, Officer Smith telephonically contacted Sergeant F. Alferez, Serial No. 31625, Foothill Patrol Division, and notified him of the NTUD incident. Sergeant Alferez received a text message from Officer Smith at approximately 1759 hours indicating that Officer Smith needed help for an urgent matter. Sergeant Alferez called and spoke with Officer Smith at approximately 1845 hours. Officer Smith informed

Sergeant Alferez of the NTUD. Sergeant Alferez instructed Officer Smith to remain calm, that notifications needed to be made, and that he would be contacted by the Department. According to the FID investigation, Sergeant Alferez notified Lieutenant W. Kelly, Serial No. 30052, Foothill Patrol Division, Watch Commander. Sergeant Alferez obtained Officer Smith's location, home address, service pistol location, and vehicle location at the direction of Lieutenant Kelly. Sergeant Alferez provided Lieutenant Kelly the additional details provided by Officer Smith. Sergeant Alferez directed Officer Smith to stay at his residence and await further instruction by the Department **[Additional/Equipment - Sergeant's Daily Report (Documentation)]**.

According to the FID investigation, Lieutenant Kelly instructed Sergeant Alferez to obtain Officer Smith's location, home address, service pistol location, and vehicle location. Lieutenant made notification to Captain D. Grimes, Serial No. 31168, Commanding Officer, Foothill Area **[Additional/Equipment - Watch Commander's Daily Report (Documentation)]**.

According to the FID investigation, Captain Grimes, along with personnel from FID, OIG, and LAPD Internal Affairs Group responded to LASD Santa Clarita Valley Detective Bureau.

According to the FID investigation, at approximately 2005 hours, Detective C. Bryne, Serial No. 442442, LASD, contacted Officer Smith telephonically and informed him that deputies were outside his residence and wanted to speak with him. Detective Bryne was the investigating detective of the LASD ADW investigation. Officer Smith exited his residence and complied with their instructions. Los Angeles Sheriff Department deputies conducted a search of his residence and recovered Officer Smith's Sam Browne belt, service pistol, his truck's damaged front passenger window, and three 24-ounce cans of Modelo beer. Additionally, LASD personnel responded to Rapture Auto Body and impounded Officer Smith's Ford truck.

According to the FID investigation, Officer Smith voluntarily accompanied the LASD deputies to the Santa Clarita Valley LASD Detective facility. While at the facility, Detective Bryne conducted an interview of Officer Smith, in which Officer Smith waived his Miranda Rights. Officer Smith was cooperative and forthcoming during the interview.

According to the FID investigation, on October 25, 2019, at approximately 2340 hours, Detective Deegan, Serial No. 287394, LASD, conducted a magazine count of Officer Smith's service pistol. The count revealed Officer Smith's service pistol had sixteen rounds in the magazine and one round in the firing chamber. The count was conducted in the presence of FID investigators and Investigator E. Kreins, Serial No. N4678, Office of the Inspector General (OIG).

According to the FID investigation, on October 25, 2019, Sergeant R. Valadez, Serial No. 31197, LAPD, Internal Affairs Group, initiated a personnel complaint based on the LASD investigation and Officer Smith's statements to Sergeant Alferez (CF# 19-003128).

According to the FID investigation, on November 12, 2019, Officer Smith's service pistol was examined and tested for functionality by LASD Senior Criminalist Iezza, Serial No. 456828.

The analysis determined Officer Smith's service pistol functioned as designed and the trigger pull was within department specifications.

According to the FID investigation, on February 12, 2020, LASD Detective Bryne presented the investigation to the Los Angeles County District Attorney's Office for filing consideration. On June 10, 2020, Deputy District Attorney D. Delport reviewed the criminal complaint against Officer Smith and declined to file charges.<sup>3</sup>

## **FINDINGS**

**Tactics** – Tactical Debrief, Officer Smith.

**Drawing/Exhibiting** – Does Not Apply.

**Non-Tactical Unintentional Discharge** – Administrative Disapproval, Negligent Discharge, Officer Smith.

## **ANALYSIS**<sup>4</sup>

### **Detention**

Does not apply.

### **Tactics**

Department policy relative to a Tactical Debrief is: *"The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance"* (Los Angeles Police Department Manual, Volume 3, Section 792.05).

Officer Smith's tactics were not a factor in this incident; therefore, they were not reviewed or evaluated. However, Department guidelines require personnel who are substantially involved in a Categorical Use of Force incident to attend a Tactical Debrief. I have determined that it would be appropriate to recommend a Tactics finding of Tactical Debrief.<sup>5</sup>

During the review of this incident, the following Debriefing Point was noted:

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<sup>3</sup> The Los Angeles County District Attorney's Office completed its review of the allegation that Officer Smith committed the crimes of Negligent Discharge of a Firearm, in violation of Penal Code section 246.3(a) and Driving Under the Influence of Alcohol, in violation of Vehicle Code section 23152(a), and declined to initiate criminal proceedings.

<sup>4</sup> The analysis reflects my recommendations as supported by the preponderance of the evidence established by the investigation.

<sup>5</sup> A Tactical Debrief shall be conducted for all CUOF incidents within 90 calendar days of the conclusion of the BOPC review process (LAPD Department Manual, Volume 3, Section 792.15).

- Basic Firearm Safety Rules

### Tactical De-Escalation

*Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

#### Tactical De-Escalation Techniques

- *Planning*
- *Assessment*
- *Time*
- *Redeployment and/or Containment*
- *Other Resources*
- *Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)*

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, Officer Smith was off-duty, and was driving his personal owned vehicle at the time of this incident. He was not engaged in any tactical operations; therefore, Officer Smith was not evaluated for Tactical De-Escalation.

### **Additional Tactical Debrief Topic**

**Holstering Service Pistol** – Officer Smith removed his service pistol from the holster of his Sam Browne. Officer Smith placed his un-holstered service pistol on top of his truck's center console and failed to maintain his pistol in a secured manner while driving. The safe storage of a firearm is paramount to minimize the possibility of an unintentional discharge or the loss of control of a firearm. I will direct this to be a topic of discussion during the Tactical Debrief.<sup>6</sup>

### **Command and Control<sup>7</sup>**

*Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary*

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<sup>6</sup> Los Angeles Police Department Manual, Volume 3, Section 610.90.

<sup>7</sup> Training Bulletin-Command and Control was adopted by the Department July 31, 2018.

*adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

*Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (LAPD, Training Bulletin, Volume XLVII Issue 4, July 2018).*

*Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (LAPD Supervisor's Field Operations Guide, Volume 2, Emergency Operations Guide).*

Sergeant Smith was notified of the NTUD, which involved an off-duty Department employee, Officer Smith, who was also Sergeant Smith's son. Sergeant Smith, upon becoming aware of the incident, advised Officer Smith to notify his division as per Department policy. Sergeant Smith's advisement resulted in Officer Smith, who had stated that he was concerned over the NTUD incident and had delayed reporting the incident, to now report the incident.

Sergeant Alferez spoke with Officer Smith who informed Sergeant Alferez of the NTUD. Sergeant Alferez instructed Officer Smith to remain calm, that notifications needed to be completed, and that he would be contacted by the Department. Sergeant Alferez notified Lieutenant Kelly regarding the NTUD incident. Sergeant Alferez obtained Officer Smith's location, home address, service pistol location, and vehicle location at the direction of Lieutenant Kelly. Sergeant Alferez provided Lieutenant Kelly with the additional details provided by Officer Smith.

Lieutenant Kelly was notified of the NTUD incident by Sergeant Alferez. He instructed Sergeant Alferez to obtain Officer Smith's current location, home address, service pistol location, and vehicle location. Lieutenant made notification to Captain Grimes.

Captain Grimes, along with personnel from FID, OIG, and LAPD Internal Affairs Group responded to LASD Santa Clarita Valley Detective Bureau. Captain Grimes provided oversight of the incident and Department response.

The actions of Captain Grimes, Lieutenant Kelly, and Sergeants Smith and Alferez, were consistent with Department supervisory training and my expectations of Department supervisors following a critical incident.



### **Tactical Debrief**

Each tactical incident also merits a comprehensive debriefing. In this case, there were identified areas where improvements could be made. A Tactical Debrief is the appropriate forum for involved personnel to discuss individual actions that took place during this incident.

Therefore, I will direct Officer Smith to attend a Tactical Debrief that shall include discussions pertaining to the Debriefing Topics along with the following mandatory topics:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

### **General Training Update (GTU)**

On November 14, 2019, Officer Smith attended a GTU. All mandatory topics were covered, including Firearm Manipulations.

### **UNINTENTIONAL DISCHARGE (UD)<sup>8</sup>:**

*Firearms safety is critical. Officers must have the ability to draw, holster and manipulate weapons safely at all times, especially under stressful conditions. Firearms safety rules have been established based upon real life situations and are applicable at all times. Violations of any of the safety rules will not be tolerated.*

#### ***Basic Firearm Safety Rules***

- 1. All guns are always loaded.*
- 2. Never allow the muzzle to cover anything you are not willing to shoot.*
- 3. Keep your finger off the trigger until your sights are aligned on the target and you intend to shoot.*
- 4. Be sure of your target.*

*Officers are required to know and apply the Four Basic Firearm Safety Rules throughout their careers. These rules must be ingrained into an officer's natural thought process and become second nature. Any violation of the Four Basic Firearm Safety Rules may result in the unintentional discharge of a round. This is a serious matter with the potential of having tragic results. For administrative purposes, the unintended discharge of a weapon is classified into two categories:*

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<sup>8</sup> Los Angeles Police Department Basic Firearms Manual, Page 1, July 2015.

1. *Accidental discharge: An unintended discharge of a firearm as a result of a mechanical malfunction of the firearm, not involving the shooter.*
2. *Negligent discharge: An unintended discharge of a firearm as a result of a shooter not handling a weapon in a safe manner, violating one or more of the four basic firearm safety rules (Los Angeles Police Department Firearms Manual, July 2015).*

**Administrative Disapproval - Negligent Discharge.** *Finding where it was determined that the unintentional discharge of a firearm resulted from operator error, such as the violation of a firearm safety rule (Los Angeles Police Department Manual, Volume 3, Section 792.05).*

**Officer Smith** – Smith and Wesson, M & P, 9-millimeter, semiautomatic, single round, which traveled north through the front right passenger door panel of Officer Smith's truck.

According to Officer Smith, he entered the driver seat of his personally owned vehicle. Officer Smith removed his loaded service duty pistol from the holster of his Sam Browne that was located on the rear passenger seat of his vehicle. He placed his un-holstered service pistol on the center console with the muzzle pointed towards the front right passenger door of his vehicle. Officer Smith drove out of the store parking lot and approached the intersection of Sierra Highway and Soledad Canyon Road. Officer Smith began to brake for the red tri-light and his service pistol began to slide from the center console. Officer Smith feared his service pistol would fall to the floorboard and quickly grasped for his service pistol with his right hand. When he grabbed the service pistol, a single round was discharged.

Officer Smith recalled,

*At which time I left and went to the 7-Eleven and attempted to buy the beer before I went home, because I was heading home. And then I was at the intersection of Sierra Highway and Soledad Canyon making – approaching the left-hand turn lane to make a southbound turn onto Sierra Highway, which – if I back up a little bit. When I'm in an area like that, I usually keep whatever weapon I carry – if I have both, whatever it is, I keep it up on my center console.<sup>9</sup>*

*I have my duty weapon up on my center console. I – normally if I see police officers around, I try to put my weapon down, because I know if I'm out on the streets and I see some guy rolling around with a pistol right on the center console, what am I going to think?<sup>10</sup>*

*I'm approaching the limit line. I'm getting into the lane. And for whatever reason, I don't know if there was bumps on the ground or – I felt like pistol might like –was moving. So I go to grab it and just put it aside anyway. And as I go to grab it, I think I'm grabbing the handle, and I grab it and that's when the –my duty weapon –I ND'ed.<sup>11</sup>*

<sup>9</sup> Officer Smith, Page 10, Line 24-Page 11, Line 8.

<sup>10</sup> Officer Smith, Page 11, Line 15-20.

<sup>11</sup> Officer Smith, Page 11, Line 20- Page 12, Line 2.

*I just – that's what I do when I see other police officers. I just set it somewhere out of sight. And as I do that, I grab it wrong or I'm just not paying enough attention and accidentally pull the trigger.<sup>12</sup>*

*It happened so fast that I don't even think that I had – really had the time to realize it. I just grabbed it.<sup>13</sup>*

The UOFRB Chair conducted a thorough review in evaluating the circumstances and evidence related to the NTUD. The UOFRB Chair determined that the NTUD was the result of operator error. Officer Smith did not adhere to the Department's Basic Firearm Safety Rules. Officer Smith failed to maintain control of his un-holstered service pistol as it slid on the center console of his vehicle. When he grabbed his service pistol, he placed his finger on the trigger and caused the service pistol to discharge. The UOFRB noted Officer Smith did not properly secure his service pistol in a holster, leading to the NTUD incident.

Based on the totality of the circumstances, the Chair of the UOFRB determined, and I concur that the NTUD was the result of operator error and carelessness as Officer Smith did not adhere to the Department's Basic Firearm Safety Rules. Additionally, Officer Smith did not have his service pistol properly holstered or secured, and therefore, requires a finding of Administrative Disapproval, Negligent Discharge.

## **INJURIES**

There were no injuries as a result of this NTUD incident.

## **ADDITIONAL/EQUIPMENT**

### **Officer Smith**

**Preservation of Evidence** – The FID investigation determined Officer Smith failed to preserve evidence after being involved in a NTUD incident, in regard to the scene, his service pistol, and his truck. Officer Smith failed to remain at scene after he unintentionally discharged his service pistol. Instead, he drove to his residence. According to Officer Smith, while at his residence, he removed the magazine from his service pistol and counted sixteen rounds inside the magazine and one round in the chamber. Officer Smith inspected his truck and observed two bullet holes (one to the front right passenger door and the other through the front right passenger glass window). Officer Smith searched his vehicle in an attempt to locate the discharged cartridge casing, but he could not locate it. Officer Smith removed the damaged glass window, containing a bullet hole, from the front right passenger door of his truck. Officer Smith later took his truck to an auto repair shop to repair the damage caused during the NTUD incident.

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<sup>12</sup> Officer Smith, Page 38, Line 5-9.

<sup>13</sup> Officer Smith, Page 38, Line 15-17.

**Protocols Subsequent to a Categorical Use of Force Incident** – The FID investigation determined there was a significant delay by Officer Smith in reporting the NTUD incident. The incident occurred on October 25, 2019, at approximately 0150 hours, but was not reported until 1745 hours. In addition, Officer Smith discussed the NTUD incident with his father prior to reporting the incident to his division of assignment.<sup>14</sup>

Both of these issues of Preservation of Evidence and Protocols Subsequent to a Categorical Use of Force Incident were brought to the attention of Captain G. Hurtado, Serial No. 34865, Commanding Officer, Foothill Patrol Division, who advised that these issues were being addressed in a personnel complaint initiated by LAPD Internal Affairs Group (CF No. 19-003128). The Commanding Officer of Operations – Valley Bureau (OVB) and the Director of the Office of Operations (OO) concurred with these actions. As such, I deem no further action is necessary at this time.

### **Lieutenant Kelly**

**Watch Commander's Daily Report (Documentation)** – Lieutenant Kelly's Watch Commander's Daily Report, dated October 25, 2019, did not document the required information for the NTUD incident, nor did it indicate that a Categorical Use of Force had occurred.<sup>15</sup> This issue was brought to the attention of Captain Hurtado who determined Lieutenant Kelly retired from the Department on February 1, 2020; therefore no corrective action would be necessary.<sup>16</sup> The Commanding Officer of OVB and the Director of OO concurred with these actions. As such, I deem no further action is necessary.

### **Sergeant Alferez**

**Sergeant's Daily Report (Documentation)** - Foothill Patrol Division Sergeant Alferez' Sergeant's Daily Report, dated October 25, 2019 did not document the required information for this incident. This issue was brought to the attention of Captain Hurtado who determined Sergeant Alferez' Sergeant's Daily Report provided a brief entry regarding the NTUD incident in the opening line. Further analysis determined Sergeant Alferez was directed by Lieutenant Kelly to provide limited information on the NTUD incident due to a pending personnel complaint related to this incident. Based on Captain Hurtado's analysis, he determined no corrective action was necessary. The Commanding Officer of OVB and the Director of OO concurred with these actions. As such, I deem no further action is necessary.

## **AUDIO / VIDEO RECORDINGS**

**Digital In-Car Video System (DICVS) / Body Worn Video (BWV)** – Officer Smith's NTUD occurred while he was off-duty; therefore, no LAPD DICVS or BWV were not deployed or activated during this incident

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<sup>14</sup> Los Angeles Police Department Manual, Volume 3/792.05, Employee's Responsibilities.

<sup>15</sup> Refer to instructions on LAPD Form 15.80.00, "Watch Commander's Daily Report."

<sup>16</sup> Lieutenant Kelly's retirement was unrelated to this incident.



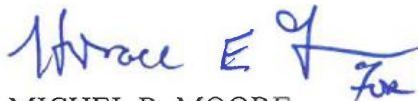
**Surveillance Video** – The 7-Eleven store was equipped with video surveillance cameras. The video from those cameras were later recovered by LASD personnel. The cameras captured Officer Smith as he entered the store, purchased items, and exit the store. Officer Smith's vehicle was also partially captured driving away from the parking lot. The video footage did not record any audio and did not capture the NTUD incident. The video footage was reviewed and was consistent with the FID investigation.

### **Chief's Direction**

I have advised the Director, Office of Support Services (OSS), to ensure that all personnel review the Department video addressing unintentional discharges of firearms, dated January 15, 2020, along with the corresponding message from the Chief of Police. The video from In-Service Training Division, Firearms Training Section, demonstrated the safe handling of firearms and reviewed the Four Basic Firearm Safety Rules to prevent unintentional discharges through the emphasis of the safe handling of firearms.

Additionally, on August 6, 2020, the Director of OSS issued a notice with regard to Non-Tactical Unintentional Discharges and Adherence to Basic Firearms Safety Rules. The notice is a reminder for all Department personnel to adhere to the basic firearms safety rules, which is of paramount importance and is our best defense against unnecessary injury.

Respectfully,

A handwritten signature in blue ink, appearing to read "Michel R. Moore".

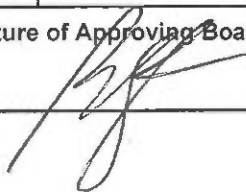



MICHEL R. MOORE  
Chief of Police

Date: Aug 12<sup>th</sup>, 2020

LOS ANGELES POLICE DEPARTMENT  
USE OF FORCE REVIEW BOARD REPORT

INC No. 052-19	CF No.	DR No.
OIS - NT Unintentional Discharge		

REVIEW BOARD INFORMATION

Location of Incident Sierra Highway and Soledad Canyon	RD 9999	Date of Incident October 25, 2019	Date and Time of Board Review August 03, 2020 1600 Hours
Chair Assistant Chief B. Girmala, Serial No. 24916	Signature of Approving Board Members: 		
Member (Office Representative)			
Member (Police Sciences and Training Bureau)			
Member (Bureau)			
Member (Peer)			
Presenting Commanding Officer			
Notes:			
Additional Considerations:			
Modification to Present Policy, Practices or Training:			
<div style="text-align: right;">  COP Date Signed: <u>8/12/20</u>   PC Date Submitted: <u>8/12/20</u> </div>			

<b>Employee (Last Name, First, Middle)</b> Smith, Tyler		<b>Serial No.</b> 43155	<b>Rank/Class</b> Police Officer II	<b>Incident No.</b> 052-19
<b>Length of Employment</b> 2 years, 3 months	<b>Current Division</b> Foothill		<b>Time in Current Division</b> 0 years, 3 months	
<b>Use of Force Review Board</b>		<b>Chief of Police</b>		<b>Police Commission</b>
<b>Tactics</b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval		<b>Tactics</b> <input type="checkbox"/> Does Not Apply <input checked="" type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval		<b>Tactics</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Tactical Debrief <input type="checkbox"/> Administrative Disapproval
<b>Drawing and Exhibiting the Firearm</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Drawing and Exhibiting the Firearm</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Drawing and Exhibiting the Firearm</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b>Lethal Use of Force</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Lethal Use of Force</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Lethal Use of Force</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b>Less-Lethal Use of Force</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Less-Lethal Use of Force</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Less-Lethal Use of Force</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b>Non-Lethal Use of Force</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Non-Lethal Use of Force</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Non-Lethal Use of Force</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
<b>Unintentional Discharge</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input checked="" type="checkbox"/> Negligent (Administrative Disapproval)		<b>Unintentional Discharge</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input checked="" type="checkbox"/> Negligent (Administrative Disapproval)		<b>Unintentional Discharge</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> Accidental <input type="checkbox"/> Negligent (Administrative Disapproval)
<b>Other Issues</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Other Issues</b> <input checked="" type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)		<b>Other Issues</b> <input type="checkbox"/> Does Not Apply <input type="checkbox"/> In Policy (No Further Action) <input type="checkbox"/> Out of Policy (Administrative Disapproval)
Notes: (J) 349v2 (J) 349v2				
<b>Final Adjudication for Out of Policy/ Administrative Disapproval Finding</b> <input type="checkbox"/> Extensive Retraining <input type="checkbox"/> Notice to Correct Deficiencies <input type="checkbox"/> Personnel Complaint		Notes:		
<input type="checkbox"/> Employee's Work History Reviewed				

\*A Tactical Debrief shall be conducted for all Categorical Use of Force Incidents.